



Costs Decision

Inquiry held on 30 May 2023 and 15 -18 August 2023

Site visit made on 30 May 2023 and 18 August 2023

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2023

Costs application in relation to Appeal Ref: APP/P1425/W/23/3315253 Former Bennett's Field Car Park, Falmer BN1 9BL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made Downing Students (Brighton) LPI & Matthew & Richard Bennett a full award of costs against Lewes District Council.
 - The appeal was against the refusal of planning permission for a development for purpose-built student accommodation (sui generis use) comprising 555 bedrooms within 2 no six-storey wings and central two-storey link; with ancillary amenity spaces, cycle parking and landscaping; and construction of new pedestrian and vehicular access from The Drove.
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Decision

1. The application for an award of costs is refused.

Reasons

2. National Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses and an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. The Guidance also makes it clear that costs applications may relate to events before the appeal was brought¹.
3. In this instance, the applicant states that the Council should not have prevented or delayed the development, which should clearly be permitted having regard to the development plan. In addition, the Council failed to review its case promptly following the lodging of the appeal against the refusal of planning permission.
4. Explicitly, the applicant refers to the reason for refusal and the Officer's delegated report and argues that the Case Officer supported the development and found that it would not appear incongruous, yet the Council's decision notice contradicts that stance by stating that it would appear as an incongruous feature that would compromise the transition between urban and rural environments.
5. Moreover, the applicant states that the Council engaged paragraph 11 d) of the National Planning Policy Framework (the Framework) yet, footnote 7 states that you should disapply the tilted balance if the application of policies within the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.

¹ Paragraph: 032 Reference ID: 16-032-20140306

6. The applicant also makes reference to the Case Officer initially supporting the development and writing a report for approval. However, it is argued that interference from elected Members resolved that the application be refused, and the Case Officer changed the recommendation to one of refusal of planning permission.
7. It is a matter of fact that the Case Officer contacted the applicant via email to state that he was in support of the development and had written his report with a recommendation to approve the planning application². However, the Case Officer reversed the recommendation to reflect the position that the Council was not in support of the development. Whilst the applicant may not agree with this position, including the involvement of elected Members in the decision making process, it is nonetheless a matter of Local Government accountability and therefore, not material to the issues before me. Thus, whilst I have a great deal of sympathy with the applicant, in that the Council changed its recommendation, I am not persuaded that this amounts to unreasonable behaviour.
8. With regard to the officer's delegated report, it should be read as a whole and the Council has ultimately provided clear reasons for refusal within the decision notice and written statements to support it at appeal. Thus, although there is some tension between the delegated report and the decision notice, I do not find the Council has acted unreasonably as it sought to defend its position.
9. The applicant also criticises the Council as it engaged paragraph 11 of the Framework, arguing that this should not have occurred as the site is within the setting of the South Downs National Park (SDNP) and Footnote 7 of the Framework is applicable. However, the wording of Footnote 7 is clear that the policies referred to are those in the Framework relating to, amongst other designated areas, "land that is designated as a National Park". In this instance, the site is adjacent to, but not within the SDNP and thus is not designated as a National Park.
10. Furthermore, as I have found that the development would not result in harm to the setting of designated heritage assets that exist in the vicinity of the appeal site, and thus the application of policies within the Framework do not provide a clear reason for refusing the development, the tilted balance at paragraph 11 would still be engaged.

Conclusion

11. Thus, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated by the applicant. Consequently, an award of costs is not justified.

Graham Wyatt

INSPECTOR

² CD 9.1 Appendix 4